



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9297189

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a biomedical researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented two certifications from the University [REDACTED] (Switzerland) stating that she received a “the degree of Doctor of Philosophy of Science (Ph.D.)” in July 2012, but she did not provide her official academic record from that university and an educational credentials evaluation to establish her degree’s equivalency to a U.S. advanced degree. See 8 C.F.R. § 204.5(k)(3)(i)(A). Additionally, while the Petitioner indicated that she received a Master of Science degree in Biomedical Engineering from [REDACTED] University (Germany) and a Bachelor of Clinical Medicine degree from [REDACTED] University (China), she did not submit evidence of these degrees. Nor did she present her official academic records from [REDACTED] University or [REDACTED] University and an academic credentials evaluation to demonstrate her degrees’ equivalency to a U.S. advanced degree. Accordingly, the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner’s initial cover letter, response to the Director’s request for evidence, and appellate submission do not address which of the regulatory criteria for exceptional ability she claims to meet. She has not offered arguments and evidence that she satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. For the reasons discussed below, we

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

conclude the Petitioner has not demonstrated eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

1. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that she intends to continue her research related to “understanding the mechanisms and treatment of human diseases.”⁴ She asserted that her proposed work involves “genes and proteins which could be used [redacted] to characterize the molecular mechanisms of how genetic factors cause these diseases.” In addition, the Petitioner stated that she plans to investigate “the underlying interactions between genes” and identify [redacted] that are involved in diseases” in order to develop “effective strategies for diagnosis and treatment of these diseases.” For instance, she noted that her proposed research is aimed at “novel therapeutic targets” for pulmonary diseases such as [redacted].

The record supports the Director’s determination that the Petitioner’s proposed endeavor has substantial merit and national importance. For example, the Petitioner’s evidence includes documentation showing that the benefit of her proposed research has broader implications, as the results are disseminated to others in the field through medical journals. As the Petitioner has documented both the substantial merit and national importance of her proposed biomedical research, she has established that she meets the first prong of the *Dhanasar* framework.

2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of her curriculum vitae, Doctor of Philosophy of Science degree, published articles, peer review activity, and an [redacted] Award (2016) she received from her division at [redacted]. She also offered evidence of articles that cited to her published work, and letters of support discussing her past research projects.

The Petitioner contends on appeal that she was a team member and recipient of an [redacted] Award from [redacted] and that this award shows “her contributions to the [redacted]”⁵ In addition, she asserts that the Director did not properly consider her “objective research

⁴ At the time of filing, the Petitioner was working “as a Visiting Fellow in the Pulmonary Branch, Division of Intramural Research (DIR), [redacted] at the [redacted], in [redacted] Maryland.” As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁵ The Director’s decision extensively quoted a [redacted] news release that announced multiple 2016 [redacted] Award recipients, but did not identify the Petitioner. Based on the omission of the Petitioner’s name, the Director stated that the information in the news release was “inconsistent” with the Petitioner’s [redacted] Award certificate and a June 2018 letter of support from [redacted] (a biochemist at [redacted] mentioning the Petitioner’s receipt of the award. The aforementioned news release listed a number of individuals who were “[a]mong the award recipients,” but it does not appear to offer a comprehensive list of the [redacted] Award winners. Furthermore, the Director’s analysis did not consider a June 2019 letter from [redacted] Scientific Director, DIR, [redacted] stating that the Petitioner “was a team member and recipient of an [redacted] Award issued by [redacted] in 2016 The award emphasizes teamwork that made these achievements possible. Teams should include (but are not limited to) scientists, clinicians, core facility

experience and reference letters from other researchers, in order to decide the significance of her original contributions to the field of endeavor.” The Petitioner further argues that the reference letters “testify as to [her] contributions to the field in detail and how those contributions have substantially influenced other scientists, explaining the nature of high peer-review record as well as publication history.” As discussed below, the record supports the Director’s determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research under *Dhanasar*’s second prong.

In letters supporting the petition, several references discussed the Petitioner’s research projects relating to [redacted] diseases.⁶ For example, [redacted], a professor of medicine, pathology, and pharmacology at [redacted] University, stated the Petitioner “investigated the role of [redacted] [redacted] . . . in the [redacted] activation of multiple genes involved in [redacted] [redacted] and cell cycle control.” He further indicated that the Petitioner “established a novel link between [redacted]s and [redacted], a [redacted] molecule that can contribute to persistence of [redacted] or mediate [redacted] shutdown.” Likewise [redacted] associate professor at University [redacted] (Ireland), asserted that the Petitioner’s work revealed “[redacted] receptor stimulation can potentially alter expression of [redacted] family members in human [redacted] cells, which plays a key role in pathophysiology of asthma, a common long term [redacted] disease of the Airways of the lungs.” [redacted] and [redacted] did not provide specific examples indicating that the Petitioner’s findings have affected therapies for [redacted] diseases, have served as an impetus for progress or generated positive discourse in her field, or otherwise represent a record of success or progress rendering her well positioned to advance her proposed endeavor.

With respect to the Petitioner’s research investigating the effect of [redacted] on the binding of [redacted] [redacted] to [redacted], [redacted], professor of internal medicine at [redacted] (Israel), indicated that the Petitioner “used a novel [redacted] coculture system to quantify the [redacted] effects of four [redacted] resulting from the interaction of [redacted] and [redacted]. She found that the standard [redacted], aspirin and indomethacin (Indo) as well as the tested [redacted] reduced the [redacted] responses.” While [redacted] asserted that the Petitioner’s “innovative coculture system well suits the needs of the exploration of novel [redacted] [redacted] drugs,” he does not explain how the Petitioner’s system has been implemented, utilized, or applauded in the biomedical field.

Regarding the Petitioner’s work involving genetic [redacted] of [redacted] cells from [redacted] patients, [redacted] director of the Respiratory Unit at [redacted] (Italy), stated that the Petitioner “advanced our understanding of this often fatal disease by discovering that multiple clones of [redacted] cells may exist in different body fluids overtime. Based on her discovery on the genetic [redacted] seen in circulating [redacted] cells, the [redacted] is being redefined as a low-grade neoplasm.” Similarly, [redacted] asserted that the Petitioner’s research “expanded on a procedure developed in the laboratory for the isolation of [redacted] cells from body fluids based on surface markers.” [redacted] further indicated that this work “has largely enhanced our understanding regarding the underlying mechanism for [redacted] cell [redacted]” but the record does not include evidence showing that the

staff, technicians, technical staff, and administrative support that contributed substantively to the work.” We conclude that [redacted]’s letter is sufficient to resolve the Director’s concern relating to the Petitioner’s [redacted] Award.

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

Petitioner's work has affected diagnostic or treatment protocols, or otherwise reflects a record of success in her field.

As it relates to the citation of the Petitioner's work, she provided July 2018 information from Google Scholar indicating that her three highest cited articles in *Journal of Cellular and Molecular Medicine* (2011), *American Journal of Respiratory and Critical Care Medicine* (2015), and *Journal of Cell Communication and Signaling* (2010) each received 47, 9, and 8 citations, respectively.⁷ The Petitioner does not specify how many citations for each of her individual articles were self-citations by her or her coauthors. Nor does she offer comparative statistics showing the significance of this level of citation within her field.

The record also includes examples of the articles which cited to the Petitioner's work.⁸ For instance, she provided an article entitled, [REDACTED] (Journal of Immunology), in which [REDACTED] and her coauthors cited to the Petitioner's paper in *Journal of Cell Communication and Signaling*. In her article, [REDACTED] cited to two of her earlier papers and to the Petitioner's work in *Journal of Immunology*, stating: "We and others have shown that [REDACTED] stimulation can potentially alter expression of [REDACTED] family members in human [REDACTED] cells. However, the transcriptional effects controlled by [REDACTED] downstream of [REDACTED] signaling in [REDACTED] cells remain unknown" [REDACTED]'s article does not distinguish or highlight the Petitioner's work from the 54 other papers she referenced in her article.

Another article presented by the Petitioner, entitled [REDACTED] (European Respiratory Review), cites to the Petitioner's paper in *American Journal of Respiratory and Critical Care Medicine*. In this review article, [REDACTED] and his coauthors referenced the Petitioner's work, stating: "The [REDACTED] has been recently reported in the blood of patients with other pulmonary diseases, including [REDACTED] and [REDACTED] but not in the same populations of cells in which [REDACTED] cells are typically found. However, whether [REDACTED] in body fluids could have a clinical role in the management of [REDACTED] has yet to be determined." [REDACTED]'s article in *European Respiratory Review* does not differentiate the Petitioner's paper from the 137 other papers he cited to in his article.

In regard to the Petitioner's [REDACTED] Award, the record reflects that this award is presented to DIR staff at [REDACTED]. While the Petitioner provided letters from [REDACTED] and [REDACTED] indicating that this award recognizes scientific achievement and teamwork within the DIR, she has not demonstrated the significance or level of distinction of her award in the biomedical field.

With respect to her peer review activity, the Petitioner provided emails indicating that she reviewed multiple manuscripts submitted for consideration for publication in *Medicine*. She has not documented the stature of this journal or offered other documentation demonstrating that her peer review experience rises to the level of rendering her well positioned to advance her proposed biomedical research. Nor does the record show that the Petitioner's participation in the widespread peer review

⁷ The Petitioner's remaining five articles were each cited five times or less.

⁸ Although we discuss representative sample articles here, we have reviewed and considered each one.

process represents a record of success in her field or that it is otherwise an indication that she is well positioned to advance her research endeavor.

Additionally, the Petitioner presented documentation showing that her research articles have been included in public scientific databases such as *Semantic Scholar*, *PubFacts*, *SciCrunch*, *Scinapse*, *Trove*, *Sparrho*, and *Science.gov*. She also offered two automated news releases from NewsRx.com and Science.NaturalNews.com summarizing her article in *Journal of Cellular and Molecular Medicine*. While inclusion of her articles in the aforementioned databases and news release websites corroborates that she has disseminated her published work, it is not sufficient to demonstrate a record of success of, or interest in, her research.

The evidence indicates that the Petitioner has conducted, published, and presented research while working at [] and University [] but she has not shown that this work renders her well positioned to advance her proposed biomedical research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance her proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that her published work has served as an impetus for progress in the medical field, that it has affected diagnostic or treatment protocols for diseases, or that it has generated substantial positive discourse in the medical community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in the healthcare or biomedical research fields. As the record is insufficient to show that the Petitioner is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

3. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her research experience and accomplishments, the importance of her field, and the impracticality of labor certification. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.